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DOC #:  
DATE FILED: 09/04/2020

September 4, 2020

**BY ECF**

Honorable Mary Kay Vyskocil  
United States District Court  
Southern District of New York  
500 Pearl Street, Room 2230  
New York, New York 10007

**Re: *Wilmington Trust, National Association v. Achenbaum et ano.***  
**Civil Case No.: 1:20-cv-03678-MKV**

Dear Judge Vyskocil:

We write with the consent of all parties pursuant to the Court's August 6, 2020 Order, which directed the parties to "file a joint letter apprising the court of the outcome of the auction, the current status of the case, and the parties' respective positions on summary judgment briefing." (D.E. 24) For the reasons discussed below, the parties respectfully request an adjournment of the pre-motion conference scheduled for September 8, 2020 until November 4, 2020, or as soon thereafter as may be heard by the Court. This is the parties' second joint request to adjourn the pre-motion conference.

Outcome of the Auction. As we previously reported, after filing this breach of loan guaranty action, Plaintiff instituted a receivership suit against the loan's borrower, Fulton Hotel, LLC ("Borrower"), in the Superior Court of Fulton County, Georgia (the "Georgia State Court"). Consistent with the parties' August 4, 2020 joint submission (D.E. 23), Borrower recently held an auction to sell the property that secures the loan at issue. On August 28, 2020, Borrower represented to Plaintiff that the auction resulted in a written, executed sale agreement with a third party in an amount the net proceeds of which are sufficient to pay all amounts allegedly owed to Plaintiff ("Sufficient Net Proceeds"). Pursuant to the July 28, 2020 Consent Order entered by the Georgia State Court, if Plaintiff does not receive Sufficient Net Proceeds by October 30, 2020, the Georgia State Court will appoint a receiver on October 31, 2020.

Current Status of the Case. Aside from participating in the pre-motion conference, the parties have agreed to place this litigation on hold through October 31, 2020.

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Parties' Respective Summary Judgment Positions. The parties continue to stand by the positions set forth in their prior letters to the Court concerning summary judgment. (D.E. 17-19.) However, in light of the potential payoff of the loan through the pending sale, the parties respectfully request that the Court adjourn the pre-motion conference until November 4, 2020, or as soon thereafter as convenient to the Court. As part of this request, the parties propose that, by no later than November 2, 2020, they will jointly report to the Court on whether the sale has closed and how that fact affects their respective summary judgment positions.

We thank the Court for its attention to this matter.


Respectfully submitted,

s/ David T. McTaggart

cc: Lisa Wolgast, Esq.  
Brady Mills, Esq.  
BY ECF

The Parties' request to adjourn the conference scheduled for September 8, 2020 is GRANTED. The conference has been rescheduled for November 10, 2020, at 10:30AM. The Parties shall file a joint status update on or before November 2, 2020. SO ORDERED.

Date: 09/04/2020  
New York, New York

  
Mary Kay Vyskocil  
United States District Judge